

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) UNITED STATES FOR THE USE
AND BENEFIT OF ADVANCED
MASONRY INC., an Oklahoma
corporation,

Plaintiff,

v.

Case No. CIV-19-741-SLP

(1) FORTIS SBJV, LLC., a foreign
corporation, and
(2) FEDERAL INSURANCE COMPANY,
a New Jersey incorporated insurance
company, and
(3) WESTERN SURETY COMPANY, a
foreign insurance company,

Defendants.

COMPLAINT

Plaintiff United States of America for the Use and Benefit of Advanced Masonry Inc., (“AMI”) for its Complaint against Defendants, Fortis SBJV, LLC (“Fortis”), Federal Insurance Company (“Federal”), and Western Surety Company (“Western”) (collectively “Defendants”) (Federal and Western shall be collectively referred to as “Co-Sureties”), alleges and states as follows:

1. Plaintiff, AMI, is an Oklahoma corporation with its principal place of business located in Oklahoma County, Oklahoma. The Miller Act bond posted by Defendant Fortis was for the benefit of AMI.

2. Defendant Fortis is a foreign limited liability company with its principal place of business in Tulsa County, Oklahoma.

3. Defendant Federal is a foreign incorporated insurance company/surety with its principal office location located in New Jersey.

4. Defendant Western is a foreign incorporated insurance company/surety with its principal office located in Illinois

5. The claims before this Court are based upon the failure of the Defendants to pay AMI for material, service, and work provided, pursuant to written contract dated June 15, 2016 between AMI and Fortis for work on the 513th Squadron Operations Facility on Tinker Air Force Base in Oklahoma City, Oklahoma (“Project”) and for failure to pay the claim made on payment bond pursuant to the Miller Act.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 and provisions of the Miller Act, 40 U.S.C. §3133(b)(3)(B). The Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. §1367.

I. BREACH OF CONTRACT

7. The US Army Corps of Engineers entered into Contract No. W912BV-16-C-0004 with Fortis for construction of the Project (“Prime Contract”).

8. On or about June 15, 2016, AMI entered into a subcontract agreement (“Agreement”) with Fortis to perform certain work on the Project.

9. The cost of the work was set forth in the Agreement.

10. AMI provided all of the work required pursuant to the Agreement. The outstanding balance for the work including change orders completed at the direction of Fortis, which remains unpaid, is \$17,245.72.

11. Additionally, AMI is owed retainage from Fortis on the Project in the amount of \$93,153.71.

12. AMI has made demand that Fortis pay the total owed of \$110,399.43 and Fortis has failed and refused to pay.

13. As the contract was for the sale of goods and services, under 12 Okla. Stat. §936, AMI is entitled to its attorney's fee with regard to the collection of the contract and with regard to this action.

II. QUANTUM MERUIT

14. AMI incorporates by reference all material allegations of paragraphs 1 through 13 above.

15. AMI provided valuable labor, services, and materials that were necessary for Fortis to perform and complete its obligation under the Prime Contract for the Project.

16. Fortis benefited from AMI's labor, services, and materials, including but not limited to the fact that Fortis could not have fully performed and completed its obligations under the Prime Contract on the Project in absence of the labor, services and materials that AMI provided.

17. AMI has suffered damages and Fortis has been unjustly enriched as a result of Fortis' failure to pay AMI for the labor, materials, and services provided by AMI.

IV. FORECLOSURE OF MILLER ACT PAYMENT BOND CLAIM

18. AMI incorporates by reference all material allegations of paragraphs 1 through 17 above.

19. Defendants Co-Sureties issued a payment bond to Defendant Fortis on the Project as required by the Miller Act, 40 U.S.C. §3131 *et seq.*

20. On October 29, 2018, AMI presented a bond claim on the Project to Co-Sureties in the amount of \$110,399.43.

21. The Co-Sureties denied AMI's bond claim.

22. The Payment Bond inured to the benefit of AMI since AMI provided labor, material, and/or services on the Project.

23. Defendants Co-Sureties have failed to fulfill the obligation under the Payment Bond to pay AMI for labor, material, and services furnished for the Project pursuant to its Agreement and pursuant to Prime Contract for the Project, and for which Fortis failed to make payment.

24. Plaintiff AMI is entitled to payment from Defendants Co-Sureties in the amount of \$110,399.43 pursuant to the Miller Act 40 U.S.C. §3133 plus attorney's fee, costs, and interest.

REQUEST FOR RELIEF

WHEREFORE, AMI prays for:

1. Damages in an amount to be proven at trial;
2. Cost of suit incurred herein;
3. Reasonable attorney's fees; and
4. Such other and further relief as the Court may deem just and proper.

ATTORNEYS' LIEN CLAIMED

JURY TRIAL DEMANDED

Respectfully submitted,

s/ A. Michelle Campney

A. MICHELLE CAMPNEY, OBA # 12990

PHILLIPS MURRAH P.C.

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ATTORNEY FOR PLAINTIFF

ADVANCED MASONRY INC.

1391277DOCX

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States for the Use and Benefit of Advanced Masonry Inc.

(b) County of Residence of First Listed Plaintiff Oklahoma
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
A. Michelle Campney, Phillips Murrah P.C.
Corporate Tower, 13th Floor, 101 N. Robinson
Oklahoma City, OK 73102

DEFENDANTS

Fortis SBJV, LLC, Federal Insurance Company, Western Surety Co.

County of Residence of First Listed Defendant Tulsa
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

40 U.S.C. §3133(b)(3)(B) and 28 U.S.C. §1367

Brief description of cause:

Breach on contract and foreclosure of Miller Act bond.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

110,399.43

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/13/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE